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October 7, 1993

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Cable Rate Regulation Reply Comments
in MM Docket No. 92-266

Dear Mr. Caton:

Please find enclosed on behalf of the National Association of Telecommunications Officers and Advisors, et. al, an original and nine copies of the Reply Comments of the National Association of Telecommunications Officers and Advisors, et. al, in the above-referenced proceeding.

Any questions regarding the submission should be referred to the undersigned.

Sincerely,

William E. Cook Jr.

William E. Cook, Jr.

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation	MM Docket No. 92-266

TO: The Commission

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE NATIONAL LEAGUE OF CITIES, THE UNITED STATES CONFERENCE OF MAYORS, AND THE NATIONAL ASSOCIATION OF COUNTIES IN RESPONSE TO THE THIRD NOTICE OF PROPOSED RULEMAKING

The National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors, and the National Association of Counties (collectively, the "Local Governments") hereby submit these reply comments in the above-captioned proceeding.

DISCUSSION

I. The Commission Must Not Permit Cable Operators To Destroy the Protections to Cable Subscribers Under Benchmark Regulation By Creating Further Exceptions to Benchmark Mandated Rates

Over the past month, it has become apparent that many cable operators are implementing the Federal

Communications Commission's ("Commission's") benchmark rate regulations to their limits (if not beyond) to raise cable rates.[1] Cable subscribers all across the country have been complaining about rate increases, which cable operators have suggested are required by the Commission's rules -- despite the fact that the Commission's rules simply set ceilings, do not mandate rate increases, and, in fact, were expected to result in rate decreases.[2]

Once again -- this time with respect to so-called "external costs" -- cable operators are attempting to undermine the limited rate protections granted cable subscribers under the benchmark regulations.[3] Even

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[1] See, e.g., Farhi, "Cable Rules Will Raise Some Bills," Washington Post, August 18, 1993, at A1.

[2] Local Governments are encouraged by the Commission's decision to conduct a survey of cable operators to determine if they are actually raising rates under the Commission's benchmark regulations. See Order, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, FCC 93-446 (released Sept. 17, 1993).

[3] Cable operators already have scored some successes in this regard as a result of the Commission's actions in its Order on Reconsideration. In that Order, the Commission broadened the categories of "external" costs that cable operators may pass through to subscribers on top of benchmark rates mandated by the Commission's rules. For example, among other things, the Commission's rules now permit cable operators to pass through as "external" costs those costs of complying with local customer service requirements that exceed the Commission's minimal requirements. See First Order on

[Footnote continued on next page]

before the Commission's Third Notice of Proposed Rulemaking in this proceeding, Local Governments were concerned that exceptions to the benchmark rates for "external costs" might be abused by cable operators to impose unreasonable rates for cable service. Permitting external cost treatment of the myriad expenditures proposed by cable operators -- with the concomitant automatic rate increases for subscribers -- would eviscerate the Commission's benchmark approach to protecting the public.[4]

Cable operators are now requesting that the Commission create a host of additional exceptions to its benchmark rules which cable operators might manipulate to impose even greater rate increases on subscribers.[5]

[Footnote continued from previous page]
Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, FCC 93-428 at ¶ 102 (released August 27, 1993).

[4] Such a concern is compounded by the fact that the Commission -- at least thus far in this proceeding -- has not required cable operators to reduce current rates to a level that would eliminate monopoly rents. See Further Comments of NATOA, et al., filed June 17, 1993 (urging the Commission to recalculate the competitive rate differential and require cable operators to reduce September 30, 1992 rates by up to 28 percent, rather than by the 10 percent currently mandated by the Commission).

[5] Among other things, Local Governments strongly oppose cable commenters' request that the Commission: (a)

[Footnote continued on next page]

If adopted, these exceptions would virtually guarantee that cable operators -- under the guise of rate regulation -- continue to reap the monopoly profits that Congress, in enacting Section 623 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 543, intended for the Commission to limit through its rate regulations.

Moreover, if certain of these proposals were adopted, cable operators would have free rein to pass

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[Footnote continued from previous page]
permit cable operators to treat as external costs any other upgrade costs undertaken at the time of an upgrade required by a franchising authority; (b) treat as external costs the costs of complying with federal customer service and technical standards, and local zoning requirements; (c) permit cable operators with rates below the benchmark to raise their rates to the benchmark rate if they have undertaken upgrades in the past three years; (d) permit cable operators to pass through any rate increases as a result of channel additions upon thirty days notice and without prior review by the franchising authority or the Commission; (e) prohibit franchising authorities from reviewing proprietary information they would need to determine whether rate changes resulting from channel deletions or additions are reasonable; (f) permit cable operators to include a portion of upgrade costs in any rate increase resulting from the addition of channel capacity; and (g) permit a cable operator to include profits, promotional costs and other costs as part of the cost of adding a channel to a cable system. See, e.g., Comments of TKR Cable Company at 8 (filed Sept. 30, 1993); Comments in Response to the Third Notice of Proposed Rulemaking by Falcon Cable TV, et al. at 13, 19 (filed Sept. 30, 1993); Comments of Time Warner Entertainment Co., L.P. at 5-6 (filed Sept. 30, 1993); Comments of Continental Cablevision, Inc. on the Third Notice of Proposed Rulemaking at 14-17 (filed Sept. 30, 1993); and Comments of Discovery Communications, Inc. at 8-11 (filed Sept. 30, 1993).

through to cable subscribers upgrade costs for services that may not benefit subscribers to regulated tiers, or that such subscribers may not want.[6] Cable plant is already in place for regulated services; upgrade costs should be recovered through the non-regulated services that upgrades are generally constructed to provide.

For the reasons Local Governments advanced in numerous comments filed in this proceeding,[7] Local Governments strongly urge the Commission not to adopt the proposals advanced by commenters that would further undermine the benchmark system.

II. The Commission Should Prohibit Accelerated Depreciation of Upgrades in Order To Protect Cable Subscribers From Unreasonable Rates

The Commission should not permit cable operators to amortize or depreciate upgrades to cable systems on

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[6] See, e.g., Comments of TKR Cable Company at 8 (filed Sept. 30, 1993) ("The Commission should allow cable operators to include the costs of voluntary upgrade features if undertaken as part of the required upgrade").

[7] See, e.g., Further Comments of Local Governments (filed June 17, 1993); Petition for Reconsideration and Clarification by Local Governments (filed June 21, 1993); Opposition by Local Governments to Petitions for Reconsideration and Clarification (filed July 21, 1993); Comments of Local Governments (filed Sept. 30, 1993). See also Comments of Local Governments in MM Docket No. 93-215 (filed August 25, 1993); Reply Comments of Local Governments in MM Docket No. 93-215 (filed September 14, 1993).

an accelerated basis.[8] By using accelerated depreciation rates, cable operators might be able to justify in a cost-of-service proceeding sharp rate increases to cover such depreciation charges. Accelerated depreciation of upgrades might also permit cable operators to charge rates that become unreasonable once such upgrades are fully depreciated. Such a result would occur if cable operators are able to switch between cost-of-service and benchmark regulation over a period of time.[9]

Cable operators should be permitted to depreciate upgrades pursuant to straight-line depreciation based on the useful life of the upgrade equipment. Such

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[8] For example, commenters have suggested that upgrades be amortized over a period shorter than the useful life of such upgrades because commenters allege that the upgrades usually become technically obsolete before the end of their useful life. See, e.g., Comments in Response to the Third Notice of Proposed Rulemaking by Falcon Cable TV, et al. at 13 (filed Sept. 30, 1993) ("the allowable amortization period should be approximately half of the useful life of plant components"). These commenters provide no evidence for their assertions.

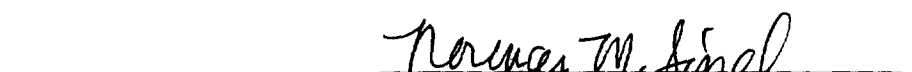
[9] For example, a cable operator might, as a result of cost-of-service showings, be permitted substantial rate increases based on accelerated depreciation of its upgraded system. After the upgrade is fully depreciated, a cable operator may simply seek to impose the capped rate increase permitted by the benchmark regulations. Thus, a cable operator would continue to receive a capped rate increase even after its costs have dramatically declined as a result of the upgrade being fully depreciated. Cable subscribers should not have to bear the cost of such accounting games by cable operators.

treatment will ensure that cable subscribers experience only modest increases in cable rates if a cost-of-service showing justifies such a rate increase. Moreover, such depreciation will limit cable operators' manipulation of their choice of a cost-of-service or benchmark proceeding so that they can impose unreasonable rates on cable subscribers.

CONCLUSION

For the foregoing reasons, the Commission should not adopt proposals by commenters that would undermine the Commission's benchmark regulations, and that might be abused by cable operators to impose unreasonable rates.

Respectfully submitted,



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October 7, 1993